



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB590]

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Exempted Fishing Permit**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from the REEF Environmental Education Foundation (REEF). If granted, the EFP would authorize the deployment of non-containment and spiny lobster traps in the Federal waters of the South Atlantic by research and contracted commercial vessels to target lionfish. The project would seek to determine the effectiveness of these traps for attracting and collecting invasive lionfish while avoiding impacts to non-target species and habitats.

DATES: Written comments must be received on or before *[insert date 15 calendar days after date of publication in the* **FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on the application, identified by "NOAA-NMFS-2021-0119" by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2021-0119" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Kelli O'Donnell, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the application and programmatic environmental assessment (PEA) may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/lionfish-traps-exempted-fishing-permit-applications>.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, 727-824-5305; e-mail: kelli.odonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: The EFP is requested under the

authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

Lionfish is an invasive marine species that occurs in both the Gulf of Mexico (Gulf) and South Atlantic. The harvest of lionfish in the Federal waters of the Gulf and South Atlantic is not currently managed by NMFS. The EFP application submitted to NMFS involves the use of prohibited gear in Federal waters. Federal regulations prohibit the use or possession of a fish trap in Federal waters in the Gulf and South Atlantic (50 CFR 622.9(c)). In South Atlantic Federal waters, the term "fish trap" refers to a trap capable of taking fish, except for a seabass pot, a golden crab trap, or a crustacean trap, which are a type of trap historically used in the directed fishery for blue crab, stone crab, red crab, jonah crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, red crab, jonah crab, and spiny lobster (50 CFR 622.2). The EFP would exempt these activities from the regulations prohibiting the use or possession of a fish trap in Federal waters of the South Atlantic at 50 CFR 622.9(c) and exempt the activities from the spiny lobster seasonal closures at 50 CFR 622.403(b) and (c). This allows the applicant to use non-containment traps and spiny lobster traps to target lionfish throughout the calendar year, including during the spiny lobster closed season off Florida. This exemption does

not apply to fishing in areas where spiny lobster trap fishing is currently prohibited in Federal waters to protect corals (50 CFR 622.406). As described in more detail later in this notice, the EFP will allow lionfish to be retained year-round from both the non-containment and the spiny lobster traps. The lionfish could be retained for personal use, which includes further scientific studies, and commercial use. Other incidentally caught species may be retained from the spiny lobster traps during the spiny lobster open season for personal and commercial use. Commercial use is limited to the contracted commercial fishers and must comply with all applicable laws and regulations. Additionally, to allow for retention of lionfish and incidental species from the traps as outlined, the EFP would exempt the applicant from commercial and recreational trap gear restrictions at 50 CFR 600.725(v) for the South Atlantic Snapper-Grouper Commercial and Recreational Fisheries (FMP) and from recreational trap gear restrictions for the Recreational Fishery (non-FMP).

The applicant seeks an EFP to test the effectiveness of non-containment traps in capturing lionfish in the South Atlantic while avoiding impacts to non-target species, protected species, and habitats. NMFS analyzed the effects of testing traps that target lionfish on the environment, including effects on Endangered Species Act (ESA)-listed species and designated critical habitat, and other non-target species and habitat, in the Gulf and South Atlantic regions

through a PEA. Before issuing the permit, NMFS will analyze whether the proposed effort concerning non-containment traps and use of spiny lobster traps outside of the spiny lobster fishing season fits within the scope of the PEA and the ESA analysis on the expected effort under the PEA. If the proposed activities fit within the PEA and the ESA consultation, NMFS will document that determination for the record. Otherwise, NMFS will complete the required analyses.

The specific EFP request noticed here is further described and summarized below.

REEF is requesting authorization to test non-containment traps in the South Atlantic to harvest lionfish aboard federally permitted commercial spiny lobster fishing vessels and state of Florida research vessels. The proposed activities would examine the effectiveness and performance of non-containment traps for capturing lionfish, with the goal of identifying the best non-containment trap modification to maximize lionfish catch and reduce bycatch of other species. Both the non-containment and the spiny lobster traps would be fished singularly or in a trawl configuration with a maximum of 32 traps and 2 surface lines with buoys per trawl. Some traps would be outfitted with cameras and/or hydrophones. Non-containment traps would be compared to standard spiny lobster trap controls. The standard spiny lobster traps to be used in the EFP would have a current endorsement, stamp, or certification. Sampling with the traps in the South Atlantic

would occur in Federal waters in water depths from 100-300 ft (30-100 m) between Alligator Reef and Looe Key Reef in the Florida Keys. Commercial vessels would complete 20 trips per year while state research vessels would complete 30 trips per year for a maximum of 50 trips per year among all participating project vessels. Only areas open to commercial lobster fishing would be included in the study area and the complete calendar year would be available for sampling as a result of the lobster season exemptions in the EFP. No more than 100 non-containment traps would be deployed in the water at any given time, regardless of number of vessel deploying traps. During the spiny lobster closed season, no more than 100 non-containment and 100 spiny lobster traps would be deployed in the water at any given time. Trap soak times would vary, but they would not exceed 21 days per deployment. No bait would be used in the non-containment traps. Spiny lobster traps would be fished normally, with or without bait, at the discretion of the commercial fishermen. The project would deploy both non-containment traps and spiny lobster traps in various configurations. The spiny lobster traps would serve as control traps for the project and act as a way to examine the performance of the non-containment traps as a gear type for harvesting lionfish. As practicable, video and still photographs of trap deployment and animal behavior in and near traps would be recorded using remotely operated vehicles.

REEF would contract up to three federally permitted

commercial lobster trap vessels crewed by fishermen with experience fishing within the study area. Additionally, the commercial vessel contractors must have demonstrable experience in the catching and handling of lionfish. The other project vessels would be two state of Florida research vessels. Researchers would be onboard the commercial vessels if scheduling allows. Data to be collected per trip would include: non-containment trap design, gear configuration, and fishing effort data (e.g., date and time of deployment and retrieval, latitude, longitude, and water depth of each deployed trawl, soak time); trap loss and movement from original set position; protected species interactions; bycatch species (amount, length, and disposition); and lionfish catch data for each trap type. All non-commercially viable bycatch species would be returned to the water as soon as possible. Commercial fishermen would be allowed to retain lionfish caught in the non-containment trap and spiny lobster traps for commercial catch year-round. During the spiny lobster open season, commercial fishermen would be able to retain for commercial purposes species caught from spiny lobster traps, including lionfish, subject to current regulations. In particular, depending on REEF's commercial vessels selected, species that are legally allowed to be commercially harvested in Federal waters by the contracted commercial fishermen may be retained as commercial catch as long as the harvest and retention complies with applicable laws and regulations (e.g.,

permitted commercial fishermen may retain species of the legal size taken during the applicable season from appropriate areas using legal gears and vessels, consistent with applicable laws and regulations). The researchers and contracted commercial fishers also can retain lionfish from the non-containment and spiny lobster traps year-round for personal use, including further scientific study. Other incidentally caught species can be retained from the spiny lobster traps during the spiny lobster open season for personal use, subject to applicable law (e.g., bag and possession limits). The EFP, if issued, will provide appropriate exemptions from the list of authorized gear types at 50 CFR 600.725(v) to allow the species to be retained for commercial and recreational purposes from trap gear. This would include an exemption from the recreational trap gear restrictions for the Recreational Fishery (Non-FMP) in the South Atlantic at 50 CFR 600.725(v) to allow the use of traps to retain lionfish for recreational purposes year-round, and an exemption from the commercial and recreational trap gear restrictions for the South Atlantic Snapper-Grouper Commercial and Recreational Fisheries (FMP) to allow the use of traps to retain managed snapper-grouper species for recreational purposes during the spiny lobster open season. "Recreational purposes" covers harvest for further scientific studies of lionfish as well as for personal consumption of lionfish and managed species caught in the traps. Previous lionfish studies from 100 deployments showed

non-containment trap bycatch to consist only of striped burrfish, jackknife fish, and tattler bass, so lionfish is anticipated to be the primary species harvested out of the non-containment traps and bycatch of non-target species is expected to be minimal. Bycatch from the spiny lobster traps are expected to be similar to that from the spiny lobster trap fishery in the South Atlantic.

The applicant has requested the EFP be effective for a 2-year period from the date the EFP is issued.

NMFS finds the application warrants further consideration based on a preliminary review. Possible conditions the agency may impose on the permit, if granted, include but are not limited to, a prohibition on conducting activities within marine protected areas, marine sanctuaries, or special management zones. Additionally, NMFS may require special protections for ESA-listed species and designated critical habitat, and may require particular gear markings. A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the appropriate fishery management agency of the affected state, the South Atlantic Fishery Management Council, the U.S. Coast Guard, and a determination that the activities to be taken under the EFP are consistent with all applicable laws and regulations.

Authority: 16 U.S.C 1801 *et seq.*

Dated: December 27, 2021.

Karen Abrams,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

[FR Doc. 2021-28352 Filed: 12/29/2021 8:45 am; Publication Date: 12/30/2021]